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Owners and Persons Interested in the Vessel Mt Titan Vision Vs. 3f Industries Ltd.

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Court : Chennai

Decided On : Dec-19-2013

Judge : R.Subbiah

Appellant : Owners and Persons Interested in the Vessel Mt Titan Vision

Respondent : 3f Industries Ltd.

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

19. 12.2013 CORAM THE HONOURABLE MR. JUSTICE R.SUBBIAH A.Nos.5357, 5358 and 5690 of 2013 in C.S.No.740 of 2013 A.Nos.5357 and 5358 of 2013: Owners and persons interested in the vessel MT Titan Vision, now lying at The Port of Krishnapatnam, Andhra Pradesh, represented by its master. ... Applicant. vs. 3F Industries Ltd., 36, CP Ramaswamy Road, Alwarpet, Chennai 600 018 rep. By its Vice President and Company Secretary S.Rangarajan ... Respondent A.No.5690 of 2013: PROFESSIONAL SHIP MANAGEMENT PVT. LTD., rep. By its Director, Mr.Anil Kumar, 116, Skylark Building, Polot No.63, Sector 11, CBD, Belapur, Navi, Mumbai. ... Applicant vs. 3F Industries Ltd., 36, CP Ramaswamy Road, Alwarpet, Chennai 600 018 rep. By its Vice President and Company Secretary S.Rangarajan ... 1st respondent Owners and persons interested in the vessel MT Titan Vision, now lying at The Port of Krishnapatnam,

Andhra Pradesh, represented by its master. ... 2nd respondent. The application in A.No.5357 of 2013 has been filed under Order XIV Rule 8 of the O.S.Rules r/w Section 151 C.P.C. to vacate the order of arrest of the vessel dated 31.10.2013 passed by this Court in A.No.5113 of 2013.

2. The application in A.No.5358 of 2013 has been filed under Order VII Rule 11(d) of C.P.C. r/w Order XIV Rule 8 of the O.S.Rules, to reject the plaint as not maintainable in law, in view of the fact that this Court has no admiralty jurisdiction to entertain the suit in C.S.No.740 of 2013.

3. The application in A.No.5690 of 2013 has been filed under Order XIV Rule 8 r/w Order 42 Rule 3 of O.S.Rules, by the impleaded party to pass an order of interim arrest and sale of the vessel MT Titan Vision, with a gross tonnage of (GRT) 6190 MTs and a dead weight of (DWT) 2901 MTs which is owned and managed by M/s.Horizon Marine Pvt. Ltd., together with Engines, Tackles, Cranes, Derricks, Machinery and other Paraphernalia and Articles on Board in the said vessel presently lying at Krishnapatnam Port, Nellore District, Andhra Pradesh pending disposal of the suit. For plaintiff : Mr.P.S.Raman, SC, for M/s.Pushpa Menon For Defendant : Mr.Bijay Sundar For Impleaded Party : Mr.Amitava Majundar, for Mr.Abdul Quddohose. COMMON

ORDER

A.Nos.5357, 5358 and 5690 of 2013 in C.S.No.740 of 2013 R.SUBBIAH, J The application in A.No.5357 of 2013 has been filed to vacate the order of arrest of the vessel dated 31.10.2013 passed by this Court in A.No.5113 of 2013.

2. The application in A.No.5358 of 2013 has been filed to reject the plaint as not maintainable in law, in view of the fact that this Court has no admiralty jurisdiction to entertain the suit in C.S.No.740 of 2013.

3. The application in A.No.5690 of 2013 has been filed by the impleaded party to pass an order of interim arrest and sale of the vessel MT Titan Vision, with a gross tonnage of (GRT) 6190 MTs and a dead weight of (DWT) 2901 MTs which is owned and managed by M/s.Horizon Marine Pvt. Ltd., together with Engines, Tackles, Cranes, Derricks, Machinery and other Paraphernalia and Articles on

Board in the said vessel presently lying at Krishnapatnam Port, Nellore District, Andhra Pradesh pending disposal of the suit.

4. For the sake of convenience, the parties will be referred to as per their ranking in the suit.

5. The present suit in C.S.No.740 of 2013 has been filed by the plaintiff viz., 3F Industries Limited, represented by its Vice President and Company Secretary S.Rangarajan, as against the defendant viz., Owner and Persons interested in the vessel MT Titan Vision, now lying at the Port of Krishnapatnam, Andhra Pradesh, represented by its Master for the following reliefs:- (i) To direct the defendant to pay a sum of Rs.90,68,930.45 (in US\$ 143609.35) together with interest at the rate of 18% per annum from the date of plaint till the date of realisation; (ii) For the arrest and sale of the defendant vessel MT Titan Vision together with Engines, Tackles, Cranes, Derricks, Machinery and other Paraphernalia and Articles on Board the said vessel presently lying in the Indian waters at the Port of Krishnapatnam, Andhra Pradesh or wherever found within the territorial waters of India; (iii) For a direction to adjust the sale proceeds of the defendant vessel MT Titan Vision against the suit claim; and (iv) For payment of costs of the suit.

6. The averments made in the plaint, in nutshell, are set out hereunder:- (a) The plaintiff is a company having their office at Chennai. The defendant is the owners and persons interest in the vessel MT Titan Vision (herein after referred to as the vessel) registered in Chennai with a gross tonnage of (GRT) 6190 MTs and a dead weight of (DWT) 2901 MTs. The said vessel is owned and managed by M/s.Horizon Marine Pte Ltd., having their office at No.163, Trans Street, No.0903 Lian Huat Building, Singapore 079024. (b) The plaintiff is carrying on business in edible oil. In the course of their business, the plaintiff imported crude Palm Oil as part of their imports from the Shipper M/s. Golden Agri International Pte. Ltd., Singapore at the Port of Krishnapatnam among other ports. For this purpose, the plaintiff had entered into four contracts with the Shipper viz., M/s.Goden Agri International Pte Ltd for carriage of 8000 Metric Tonnes of Crude Palm Oil. The said contracts were signed in Chennai and negotiations took place through the corporate office of the plaintiff in Chennai and the agreements were signed in

Chennai. Therefore, this Court has jurisdiction to entertain the suit. (c) On 12th September, 2013, the vessel loaded about 3001.259 MT of cargo for discharge at Krishnapatnam and about 5000 MTs for Haldia Port. For preserving the cargo of Palm Oil in liquid form, it is necessary to maintain the temperature in the cargo hold at 52 degree Celsius. It was expressly agreed and undertaken by the defendant in the bill of lading that the temperature in the cargo hold will be so maintained so as to preserve the same and allow discharge of the cargo at Krishnapatnam. The said cargo can be unloaded only if the same is in liquid form and the said state is possible only if the cargo is maintained at the temperature of atleast 52 degree Celsius. (d) On arrival at the discharge port, it was noted by the plaintiff that the volume of the cargo was short by 20.032 MT, which measurement was taken in the presence of the defendant and the same has been duly acknowledged by them. The defendant had failed to maintain the temperature in the cargo hold at 52 degree Celsius as they apparently developed technical problems in all the three auxiliary units and the crew was unable to rectify the same. The result was that the defendant could not maintain the temperature of 52 degree Celsius in the cargo hold and the same dropped to 40-42 degree Celsius. (e) Since the vessel was allowed to be berthed at the Port without demurrage charges only for a period of 43.5 hours from the time of arrival, the Port authorities started levying penal charges. But, by a letter of undertaking dated 24.12.2013, the defendant has accepted their fault in failing to maintain the temperature and undertaken to incur all the expenses for the waiting time, demurrage, shifting, re-berthing charges including pilotage, tug costs at Krishnapatnam Port at the owner's account. (f) In view of the delay in discharging the cargo by more than a month, the plaintiff has been put to great loss and injury. The plaintiff incurred financial loss at the late delivery of the cargo and they are also required to pay penalty and incur loss for late supply of goods to their customers. This is in addition to the loss caused to them towards overheads for the idling of the plant during this period. The plaintiff had also to close their plant for the period from 23.9.2013 to 28.9.2013 and 11.10.2013 to 21.10.2013 and thereupon incur loss of profit due to cancellation of orders and also the said closure of the plant which was caused due to the non availability of cargo. The plaintiff had suffered a loss of US\$ 143609.35, equivalent to Rs.90,68,930.45. Hence, the plaintiff has filed the

present suit for the prayer stated supra.

7. Pending suit, the plaintiff has filed an application in A.No.5113 of 2013 for interim arrest and sale of the said vessel MT Titan Vision, with a gross tonnage of (GRT) 6190 MTs and a dead weight of (DWT) 2901 MTs which is owned and managed by M/s.Horizon Marine Pvt. Ltd., together with Engines, Tackles, Cranes, Derricks, Machinery and other Paraphernalia and Articles on Board in the said vessel presently lying at Krishnapatnam Port, Nellore District, Andhra Pradesh pending disposal of the suit. This Court, by an order dated 31.10.2013, ordered for interim arrest.

8. On appearance, the defendant has taken out two applications, one in A.No.5357 of 2013 to vacate the interim order of arrest dated 31.10.2013 passed by this Court in A.No.5113 of 2013. An another application in A.No.5358 of 2013 has been filed to reject the plaint as not maintainable in law, in view of the fact that this Court has no admiralty jurisdiction to entertain the suit in C.S.No.740 of 2013.

9. The sum and substance of the affidavits filed in support of both the applications, are as follows:- (a) The tanker bills of lading and the charter party, reference of which is made in the bills of lading, in case of all disputes, will be referred to arbitration at Singapore. Under the general clause paramount, the Hague Rules and as amended by the Hague Visby Rules governing the load port alone, will be applicable under the contract of carriage, due to the international character of the contract. (b) As per the terms of the charter party and the tanker bills of lading, in the event of any dispute arising out of the said carriage, reference to Singapore arbitration in terms of LMAA has been agreed to between the parties. But, the present suit has been filed by the plaintiff without reference to the arbitration clause. The vessel is presently lying at Krishnapatnam Port within the territorial jurisdiction of High Court of Andhra Pradesh. There is no cause of action under the contract of carriage that has arisen in Chennai to invoke the jurisdiction of this Court. (c) The four contracts of sale which were entered into in Chennai with M/s.Golden Agri International Pte Ltd. have no relevance with this defendant or the contracts of affreightment. The present suit filed as an admiralty action is liable to be dismissed for lack of jurisdiction. The plaintiff is a company, having its

registered office at Tadepalligudem and its corporate office is at Nellore. The address as stated in the affidavit and plaint, does not find place in any of the documents filed along with the plaint or in any of the correspondence had with the defendant. The said address has been included for the reasons best known and the fact that the plaintiff is having its office at Chennai will not confer admiralty jurisdiction on this Court to file the present suit. The admiralty jurisdiction cannot be invoked for the alleged delay in discharge and interim application for arrest is not maintainable. The necessary requirement for the arrest of the vessel has neither been pleaded nor proved. Admittedly, the vessel is in Andhra Pradesh and no cause of action arises in Chennai, within the jurisdiction of this Court. Thus, the defendant has filed these two applications for the relief stated supra.

10. I have heard Mr.P.S.Raman. learned Senior Counsel appearing for the plaintiff, Mr.Bijay Sundar, learned counsel appearing for the defendant and Mr.Amitava Majundar, learned counsel appearing for the impleaded party.

11. Though an elaborate argument was made by the learned counsels appearing for the respective parties by inviting the attention of this Court to the provisions of the Merchant Shipping Act, 1958 and the International Convention on the arrest of Ships, Geneva, 1999 by referring to the various judgments, I find that the application for rejection of plaint was filed only on two grounds, which are as follows:- (i) This Court has no jurisdiction to entertain the suit on the admiralty jurisdiction of this Court since the vessel is berthed outside the jurisdiction of this Court; and (ii) No cause of action has arisen within the jurisdiction of this Court to file the suit on the admiralty jurisdiction of this Court, since the plaintiff had chosen to file the suit only on the basis of the sale contract. Therefore, there cannot be any suit against the vessel since the owner of the vessel is not a party to the sale contract.

12. Therefore, I am of the opinion that if the question with regard to the territorial jurisdiction of this Court to entertain the suit on the admiralty jurisdiction of this Court as well as the question as to whether any cause of action has arisen to make a claim as against the vessel within the jurisdiction of this Court to entertain the suit on the admiralty jurisdiction of this Court is decided, that would suffice to

dispose the application for rejection of the plaint.

13. It is the main submission of the learned counsel appearing for the defendant Mr. Bijay Sundar that the vessel is now berthed at Krishnapatam Port, Andhra Pradesh. Therefore, this Court has no jurisdiction to arrest the vessel. In support of this contention, learned counsel appearing for the defendant relied upon the judgment reported in 1996-1-L.W.182 M/s. Seawaves Shipping Services, Tehran, Iran, represented by Power of Attorney E. Rajamani v. M/s. Adriatic Tankers Shipping Co. S.A. Greece, Owners and 2 others.

14. Per contra, it is the submission of the learned Senior Counsel appearing for the plaintiff Mr. P. S. Raman that the said judgment relied upon by the learned counsel appearing for the defendant was delivered by the Division Bench of this Court in the year 1996. Since the plaintiff's claim is a maritime claim defined under the International Convention of the Arrest of Ships, 1999 and in view of the powers of arrest under Article 2 of the Convention, in which clauses 3 and 4 clearly provide for arrest of a ship for obtaining security, this Court has admiralty jurisdiction to entertain the suit and order for arrest of the vessel till security is given for the amount claimed pending determination of the amount. In this regard, learned Senior Counsel has also relied upon the Full Bench judgment of the Bombay High Court reported in 2007 (2) ALLMR367: MANU/MH/0026/2006 J.S. Oceab Liner LLC, a foreign Company incorporated under foreign law v. M.V. Golden Progress A foreign flag vessel, flying the flag of Mongolia and presently in port and harbour Bombay together with her hull, tackle, machinery, apparel and otherwise paraphernalia and Abhoul Marine LLC (FZCO), a foreign company, incorporated under foreign laws. In the said judgment, the Full Bench of the Bombay High Court expressly held that though India is not a formal signatory to the 1999 convention, the terms of the convention are applicable to India and the Courts in India shall follow the terms thereof. The Full Bench has further expressly held that even in cases where there may be an arbitration clause validly governing the parties, Section 9 of the Arbitration Act cannot be exercised to arrest the ship and the only recourse open to the affected parties is to file a suit in the High Court of the State (Country) in which, the grievance has arisen. Thus, the learned Senior Counsel appearing for the plaintiff submitted that the admiralty Court has

jurisdiction to decide the issues viz., (i) within the territorial jurisdiction of the said Court, (ii) Port of registry of the vessel and (iii) where the cause of action wholly or in part has arisen, following the definition of High Court under Section 3(15) of the Merchants Shipping Act, 1958. Learned Senior Counsel further submitted that by virtue of the International Convention of the Arrest of Ships 1999, the admiralty jurisdiction of this Court could be invoked even if the vessel is berthed outside the territorial jurisdiction of this Court. Therefore, the Division Bench judgment of the year 1996 cited by the learned counsel appearing for the defendant cannot be made applicable to the facts of the present case.

15. Countering the said submission made by the learned Senior Counsel appearing for the plaintiff, Mr. Amitava Majundar, learned counsel appearing for the Bare Boat Charter submitted that the international convention cannot be used to dictate territorial jurisdiction of a sovereign nation. The Full Bench of the Bombay High Court did not deal with the territorial jurisdiction of the Bombay High Court in Admiralty. The said case was dealing with the jurisdiction of the admiralty Court to secure claims pending arbitration in foreign countries. In this context, the Bombay High Court relying on Article VII of the Arrest Convention 1999, held that a vessel could be arrested to secure the plaintiff's claim in arbitration. Learned counsel appearing for the defendant has also submitted that even prior to 1999 convention, the High Courts of Bombay and Calcutta were exercising their admiralty jurisdiction throughout the territorial waters of Country. Therefore, it is incorrect to state that only after the International Convention of the Arrest of Ships 1999, the High Courts have got jurisdiction to arrest the vessel irrespective of the territorial jurisdiction. The International Convention of the Arrest of Ships 1999 has nothing to do with the territorial jurisdiction of the High Courts in India. But, to entertain a suit on the admiralty jurisdiction, cause of action should have arisen to make a claim as against the vessel within the jurisdiction of this Court, if the vessel is berthed outside the territorial jurisdiction of this Court. But, the present suit has been filed only on the allegation that since the defendant failed to maintain the temperature at 52 degree Celsius in the cargo hold, the temperature dropped to 40-42 degree Celsius which resulted in short delivery of the cargo, apart from long delay in the delivering the cargo. Hence, the petitioner has filed a suit for damages. The nature of claim cannot be construed as a claim against the vessel.

Apart from the fact, no cause of action has arisen within the jurisdiction of this Court.

16. In view of the submissions made on either side, it would be appropriate to extract the relevant passage from the Division Bench of this Court reported in 1996-1-L.W.182 M/s.Seawaves Shipping Services, Tehran, Iran, represented by Power of Attorney E.Rajamani v. M/s.Adriatic Tankers Shipping Co. S.A. Greece, Owners and 2 others and the same is extracted hereunder:- ". It is a settled principle in Admiralty law that the vessel must be within the jurisdiction of the Court for being proceeded against. A perusal of the documents shows in this case that no part of the cause of action has arisen in this country. The services said to have been rendered by the plaintiff to the ships of defendants 1 and 2 are mostly at Iran and no part of them has been rendered in this country. It is pointed out by the trial judge in his order that the places where the services were rendered are not set out in the plaint and it is not stated anywhere that the cause of action or any part thereof arose within the jurisdiction of this Court. The learned judge has also observed that the fact that the vessel has berthed in Indian waters does not give jurisdiction to this Court to arrest the same under the Admiralty jurisdiction. There is no merit in the contention of the appellants that Admiralty jurisdiction of this Court is very wide and it extends over the entirety of territorial waters of this country, that this Court can exercise its Admiralty jurisdiction and direct the arrest of this ship in whichever Port in India it is berthed and that the Courts in Bombay, Calcutta and Madras have concurrent jurisdiction over the entirety of territorial waters of India while exercising Admiralty jurisdiction. Law relating to the territorial limits of the Admiralty Court in Madras from the inception by the Royal Charter dated 20.2.1798 and Letters Patent establishing Records' Courts at Fort St. George, Madras and at Bombay, traced in detail.". A reading of the dictum laid down in the above case would show that in that case, the plaintiff was a foreign company from Teheran, Iran. Their claim was also against a foreign ship from Greece and the ship was berthed in the port of Khandla in Gujarat and the suit was filed before this Court. Absolutely, no cause of action for filing the suit on the admiralty jurisdiction of this Court has arisen. Only in that circumstances, this Court has held that the suit is not maintainable on the admiralty jurisdiction. Therefore, I am of the opinion that to file a suit on the admiralty jurisdiction of this

Court, either the ship should be berthed within the jurisdiction of this Court or any cause of action as against the vessel should have arisen within the jurisdiction of this Court. In this regard, it would be appropriate to extract Section 3(15) of the Merchant Shipping Act, 1958, and the same is extracted hereunder:- ". 3 (15). ".High Court"., in relation to a vessel, means the High Court within the limits of whose appellate jurisdiction-- (a) the port of registry of the vessel is situate; or (b) the vessel is for the time being; or (c) the cause of action wholly or in part arises; Therefore, a reading of Section 3(15) of the Merchant Shipping Act, 1958 would clearly go to show that -- (i) If the port of registry of the vessel is situate within the jurisdiction of the High Court, then the suit is maintainable on the admiralty jurisdiction of this Court in respect of the claim as against the vessel; (ii) If the vessel is within the territorial jurisdiction of this Court, and if the cause of action for filing a claim as against the vessel arises outside the jurisdiction of this Court, the plaintiff can maintain the suit on the admiralty jurisdiction of this Court; (iii) If the vessel is berthed outside the jurisdiction of this Court and if cause of action for making a claim as against the vessel arises within the jurisdiction of this Court, the suit can be maintained on the admiralty jurisdiction of this Court. Therefore, I am not inclined to accept the submission made by the learned counsel appearing for the defendant that since the vessel is berthed at Krishnapatnam, this Court will not have jurisdiction. In case, if a cause of action for making a claim as against the vessel arises within the jurisdiction of this Court, certainly, the suit can be maintained on the admiralty jurisdiction of this Court, even if the vessel is berthed outside the jurisdiction of this Court. However, admittedly, in the present case, the port of registry of the vessel is not within the jurisdiction of this Court and the vessel is berthed outside the jurisdiction of this Court, that is at Krishnapatnam, Andhra Pradesh. Hence, the question that has to be decided is, whether the averments made in the plaint would give rise to a cause of action to maintain the suit on the admiralty jurisdiction of this Court.

17. Before dealing with the said question, it would be appropriate to extract Section 6 of the Admiralty Court Act, 1861 and Section 443 of the Merchant Shipping Act, 1958, which reads as follows:- Section 6 of the Admiralty Court Act, 1861:- ". Section 6:- The High Court of Admiralty shall have jurisdiction over any claim by the Owner or Consignee or any Assignee of any Bill of Lading of any

Goods carried into any Port in England or Wales, in any Ship, for Damage done to the Goods or any Port thereof by the Negligence or Misconduct of, or for any Breach of duty or Breach of Contract on the Part of the Owner, Master, or Crew of the Ship, unless it is shown to the satisfaction on the Court that at the Time of the Institution of the Cause any Owner or Part Owner of the Ship is domiciled in England or Wales: Provided always, that if any such Cause the plaintiff do not recover Twenty Pounds he shall not be entitled to any Costs, Charges, or Expenses incurred by him, unless the Judge shall certify that the Cause was a fit one to be tried in the said Court".. Section 443 of the Merchant Shipping Act, 1958:- ". Section 443. Power to detain foreign ship that has occasioned damage:- (1) Whenever any damage has in any part of the world been caused to property belonging to the Government or to any citizen of India or a company by a ship other than an Indian ship and at any time thereafter that ship is found within Indian jurisdiction, the High Court, may, upon the application of any person who alleges that the damage was caused by the misconduct or want of skill of the master or any member of the crew of the ship, issue an order directed to any proper officer or other officer named in the order requiring him to detain the ship until such time as the owner, master or consignee thereof has satisfied any claim in respect of the damage or has given security to the satisfaction of the High Court to pay all costs and damages that may be awarded in any legal proceedings that may be instituted in respect of the damage, and any officer to whom the order is directed shall detain the ship accordingly. (2) Whenever it appears that before an application can be made under this section, the ship in respect of which the application is to be made will have departed from India or the territorial waters of India, any proper officer may detain the ship for such time as to allow the application to be made and the result thereof to be communicated to the officer detaining the ship, and that officer shall not be liable for any costs or damages in respect of the detention unless the same is proved to have been made without reasonable grounds. (3) In any legal proceedings in relation to any such damage aforesaid, the person giving security shall be made a defendant and shall for the purpose of such proceeding be deemed to be the owner of the ship that has occasioned the damage.". A close reading of the above said provisions would show that where any damage has been done to the goods of consignee or any assignee, he can have a claim over

the vessel. So far as the plaintiff is concerned, the allegation in the plaint shows that since the defendant failed to maintain the temperature in the cargo hold at 52 degree Celsius, the volume of cargo was short by 20.032 MT. Further, there was a delay in discharging the cargo by more than one month. Therefore, for the delay in supply of the goods and also for shortage of cargo, the present claim has been made. The nature of the claim made in the plaint cannot be said to be the claim towards damage to the goods. Further, the suit was filed only based on the sale of contract entered into between the shipper and the plaintiff. The sale of contract entered into between the shipper and the plaintiff will not give rise to any cause of action to make a claim as against the vessel, since the owner of the vessel is not a party to the sale contract. Further more, there is no clause in the bill of lading to the effect that the temperature would be maintained in the cargo hold at 52 degree Celsius. The present claim was made only on the ground that since the defendant failed to maintain the temperature at 52 degree Celsius, it resulted in shortage of cargo. Therefore, in the absence of any clause in the bill of lading to the effect that the defendant should maintain the temperature at 52 degree Celsius and moreover when the owner of the ship is not a party to the sale contract and when the nature of the claim will not fall within the purview of claim as against the vessel, I am of the opinion that the suit is not maintainable on the admiralty jurisdiction of this Court.

18. But, it is the submission of the learned Senior Counsel appearing for the plaintiff that the defendant had admitted their liability vide document dated 30.10.2013. Further, in the bill of lading, the notifying address of the plaintiff is at Chennai. The original bill of lading has also been issued by the plaintiff at the Corporate Office at Chennai by way of banker in Chennai. Therefore, the suit is maintainable at the admiralty jurisdiction of this Court.

19. But, as found in the plaint, the suit has been filed only for shortage of delivery on account of non-maintenance of temperature of 52 degree Celsius at cargo hold. Unless there is a specific clause in the bill of lading with regard to maintenance of temperature in the cargo hold, even issuance of bill of lading at Chennai will not give rise to any cause of action to the plaintiff to make a claim against the vessel so that to file a suit on the admiralty jurisdiction of this Court. Further, I find that the

plaintiff has not assigned the bill of lading to make a claim as against the vessel. A claim should arise out of an agreement. In this regard, a reference could be placed in the judgment reported in AIR1989 Supreme Court 1239 A.B.C.Laminart Pvt. Ltd. and another v. A.P.Agencies, Salem. The relevant portion reads as follows:- ". The jurisdiction of the Court in matter of a contract will depend on the situs of the contract and the cause of action arising through connecting factors. In the matter of a contract, there may arise causes of action of various kinds. In a suit for damages for breach of contract, the cause of action consists of the making of the contract, and of its breach, so that the suit may be filed either at the place where the contract was made or at the place where it should have been performed and the breach occurred. The making of the contract is part of the cause of action. A suit on a contract, therefore, can be filed at the place where it was made. The determination of the place where the contract was made is part of the law of contract. But making of an offer on a particular place does not form cause of action in a suit for damages for breach of contract. Ordinarily, acceptance of an offer and its intimation result in a contract and hence a suit can be filed in a Court within whose jurisdiction the acceptance was communicated. The performance of a contract is part of cause of action and a suit in respect of the breach can always be filed at the place where the contract should have been performed or its performance completed. If the contract is to be performed at the place where it is made, the suit on the contract is to be filed there and nowhere else. In suits for agency actions the cause of action arises at the place where the contract of agency was made or the place where actions are to be rendered and payment is to be made by the agent. Part of cause of action arises where money is expressly or impliedly payable under a contract. In cases of repudiation of a contract, the place where repudiation is received is the place where the suit would lie. If a contract is pleaded as part of the cause of action giving jurisdiction to the Court where the suit is filed and that contract is found to be invalid, such part of cause of the action disappears.". In the instant case, absolutely no contract was entered into between the plaintiff and the owner of the vessel within the jurisdiction of this Court. What was entered into between the plaintiff and the shipper at Chennai was only a sale contract for supply of Palm Oil for which contract the owner of the vessel is not a party. Therefore, this Court will not have jurisdiction to entertain the

suit on the admiralty jurisdiction of this Court, particularly when the vessel is berthed outside the jurisdiction of this Court. With the present set of allegations, the plaintiff can file a suit only for damages in respect of the loss suffered by him due to short delivery and also delivery in delay before the competent civil Court. Hence, suit on the admiralty jurisdiction is not maintainable and the same is liable to be rejected.

20. Further, in the bill of lading, the plaintiff was not shown as a consignee. In the bill of lading, in the column of consignee, the name of the plaintiff does not find a place. The bill of lading provides the consignee to be to the order of various banks. In this connection, it would be useful to extract Section 1 of the Indian Bill of Lading Act, 1956 and the same is extracted hereunder:- "

1. Rights under bills of lading to vest in consignee or endorsee:- Every consignee of goods named in the bill of lading and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.". Thus, Section 1 of the Indian Bill of Lading Act, 1956 provides that only those persons who are consignees as named in the Bill of Lading or endorsees by way of an endorsement shall ".have vested in him all rights of suits".. Therefore, admittedly, they are not the consignee. Hence, as submitted by the learned counsel appearing for the Bare Boat Charter, the plaintiff was neither an endorsee nor the consignee under the Bill of Lading contract and no title to sue vested in them. On this ground also, the suit is liable to be dismissed. In this regard, a reference could be placed in the judgment of the High Court of Gujarat reported in MANU/GJ/10034/2004 in the case of M.G.Forests Pte Ltd., v. M.V.Project Workship, wherein, in paras 51, 52 and 54, it has been held as follows:- "

51. (The Indian) Bills of Lading Act, 1856 (hereinafter referred to as the ('B.L.Act')) has been brought on statute book to provide for cases where a bonafide holder of a bill of lading for value is not questioned by the Master of the vessel or other person. ... The question that arises is as to what is the right, title, interest of the

plaintiff in the goods in question. As already seen, the title to the goods is primarily based on bill of lading which is a negotiable instrument and the title passes by endorsement. Even if the contention that the transaction was midstream on the date when the suit was presented is considered, it is apparent that the transaction as to title was at midstream between plaintiff and defendant no.2. The defendant vessel was nowhere in picture. When one talks of right, title or interest in a property that the right mean only right to the property or does it include right to sue for the property. Is it possible for both these rights to exist independent of each other; namely, even if a person does not have the right to goods, can such person have right to sue. This right to sue goes along with title to the property or to the goods. Thus, in absence of title to the goods in question the plaintiff cannot claim the right to sue. The contention of the plaintiff is therefore not acceptable.

52. In-fact, there are two different contracts. One is the fixture note: whereunder, the plaintiff entered into a contract of hiring the vessel. The other is the bill of lading: it denotes right over the goods right to the goods. The plaintiff has failed in establishing that as per the bill of lading it is entitled to goods. There is no endorsement in favour of the plaintiff. There is no agreement evidencing that defendant No.2 will endorse the bill of lading at a future date in favour of plaintiff.

54. Thus, not only is the plaintiff not in a position to establish any prima facie case but it is hopeless case not entitling the plaintiff to any order of arrest. In fact, as already noted hereinbefore, the plaintiff has been categorical in admitting that loss may be incurred either by plaintiff or defendant no.2 (paragraph 5.5 of the plaint). The suit therefore deserves dismissal on this ground also.". A reading of the dictum laid down in the above judgment would show that the plaintiff has to make necessary averments in the plaint that it is entitled to the goods. When there is no pleading in the plaint that the plaintiff is the consignee or endorsee of the Bill of Lading nor producing any document to the effect along with the plaint, the plaintiff cannot be said to have had title to sue under the said Bills of Lading as on the date of filing of the suit. As observed above, the bill of lading provides the consignee to be the order of various banks. There is also no averment to the effect that the bill of lading would be endorsed at future date in favour of the plaintiff. Hence, on this ground also, the plaint is liable to be rejected.

21. In fine, application in A.No.5357 of 2013 is allowed and the interim order of arrest of this Court made in 5113 of 2013 dated 31.10.2013 is vacated and A.No.5113 of 2013 is dismissed.

22. Application in A.No.5358 of 2013 is allowed and the plaint in C.S.No.740 of 2013 is rejected. In view of the order passed in A.No.5358 of 2013, the application in A.No.5690 of 2013 and all the connected applications are closed. The Registry is directed to issue release warrant of the vessel to the learned counsel for defendant M/s.S.Vasudevan and Associates. sbi

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